Court no.3

Criminal Revision no.106 of 1997-old number.

368 of 2001-new number

Parmanand and others_____ Revisionists

Versus

Rakesh Kumar and others_____ Opposite parties

Hon'ble Irshad Hussain.J.

Heard Sri Lokendra Dobbal for the applicant-second party and Sri Sudhir Singh for the opposite party first party.

The application u/s 362 Cr.P.C. was filed with a prayer to recall order dated 2.2.2000 passed in criminal revision no.106/1997(new no.368/2001) and to restore the same so that in facts and circumstances of the case a proper order may be passed in the said criminal revision.

The case has a chequered history. Proceedings u/s 145/146 Cr.P.C. were initiated in the year 1979 which came to be terminated vide order dated 19.12.1983 whereby the learned S.D.M. had held that the actual possession of the first party on the disputed property and it was also held that the second party shall have no right to interfere in the possession of the first party till they get there title decided by the competent court. At the instance of the successful party, the learned S.D.M. passed an order on 28.5.1996 to give effect to the order passed in favour of the first party and directed to issue memo for delivery of possession but the second party preferred a revision before the Sessions Judge who set aside the said order observing that in issuing the order for delivery of possession compliance of sub clause (b)(6) of section 145Cr.P.C. is lacking. Aggrieved by the judgment and order of the Sessions Judge the first party filed petition in the High Court which was finally decided by the order dated 2.2.2000. The impugned judgment and order of the Sessions Judge dated 20.12.1996 was set aside. At that time it has been brought to the notice that unsuccessful second party had agitated the matter twice before Hon'ble Supreme Court but could not get any

favourable order, meaning thereby that no infirmity was found in the order of the learned Magistrate holding the possession if the first party on the disputed property on the relevant date and direction for delivery of possession to the said party.

On 2.2.2000 a reasoned and speaking order was passed whereby the revision of the first party was allowed and the judgment was set aside. An application u/s 362 Cr.P.C. is maintainable to correct clerical or arithmetical error in the judgment or final order disposing of a case. The learned counsel for the second party could not point out any such error in the order dated 2.2.2000 and in fact, at the time of arguments at the bar conceded that the application is not maintainable. Even otherwise nothing could be pointed out against the said order and it appears that the present application was merely preferred to delay the delivery of possession over the disputed property to the successful first party to the proceedings initially initiated u/s 145 Cr.P.C.

For the above reasons the application is devoid of merit and is hereby dismissed. The learned S.D.M. shall take steps for the delivery of possession to the first party immediately.

(Irshad Hussain, J.)

July 30, 2002
M.P.S.